

KOBAYASHI, SUGITA & GODA  
WENDELL H. FUJI 4222-0  
CLIFFORD K. HIGA 2950-0  
LANSON K. KUPAU 5687-0  
First Hawaiian Center  
999 Bishop Street, Suite 2600  
Honolulu, Hawaii 96813-3889  
Telephone: 539-8700

FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED

2008 MAY 22 AM 11:29

H. CHING  
CLERK

Attorneys for Petitioner J.P. Schmidt,  
in his capacity as Liquidator of  
PrimeGuard Insurance Company, Inc.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

J.P. SCHMIDT, in his capacity as Insurance  
Commissioner of the State of Hawaii,

Petitioner,

vs.

PRIMEGUARD INSURANCE COMPANY,  
INC., A RISK RETENTION GROUP.,

Respondent.

) S.P. No. 05-1-0443 VSM  
) (Special Proceeding)  
)  
) LIQUIDATOR'S MOTION FOR LEAVE TO  
) ADD FIRST ASSURED WARRANTY  
) CORPORATION,  
) 1SOURCEAUTOWARRANTY.COM, INC.  
) AND WARRANTEE WISE, INC. AS  
) RESPONDENTS; MEMORANDUM IN  
) SUPPORT OF MOTION; DECLARATION OF  
) LANSON K. KUPAU EXHIBITS "A" - "C";  
) NOTICE OF HEARING AND CERTIFICATE  
) OF SERVICE; PROPOSED SUPPLEMENTAL  
) ORDER OF LIQUIDATION  
)  
) HEARING  
) Date: 7/7/2008  
) Time: 11:00 AM  
) Judge: Victoria S. Marks  
)

LIQUIDATOR'S MOTION FOR LEAVE TO ADD FIRST ASSURED  
WARRANTY CORPORATION, 1SOURCEAUTOWARRANTY.COM, INC.  
AND WARRANTEE WISE, INC. AS RESPONDENTS AND PLACING THEM  
UNDER A SUPPLEMENTAL ORDER OF LIQUIDATION

Petitioner J.P. Schmidt, in his capacity as Liquidator of PrimeGuard Insurance Company,  
Inc. ("PrimeGuard"), by and through his attorneys, Kobayashi, Sugita & Goda, respectfully moves

this Honorable Court for an order granting him leave to add First Assured Warranty Corporation (“First Assured”), 1SourceAutoWarranty.com, Inc. (“1Source”) and Warrantee Wise, Inc. (“Warrantee Wise”) (“First Assured, 1Source and Warrantee Wise are collectively referred to as the “Companies”) as respondents in the underlying liquidation proceeding and placing them under a Supplemental Order of Liquidation.

On December 19, 2005, this Honorable Court placed Primeguard into liquidation pursuant to Chapter 431, Article 15 of the Hawaii Revised Statutes, entitled the Insurers Supervision, Rehabilitation and Liquidation Act (“Liquidation Act”).

Primeguard, and the Companies were under common ownership and control. Previously, the Liquidator had filed motions seeking to add First Assured and 1Source as respondents herein. In response, on June 16, 2006, First Assured filed a voluntary petition under Chapter 11 of the Bankruptcy Code (“First Assured Bankruptcy”) in the United States Bankruptcy Court for the District of Colorado, Case No. 06-13669-MER (“Bankruptcy Court”).

After extensive litigation in the Bankruptcy Court, dated December 19, 2007, PrimeGuard entered into a Settlement Agreement and Mutual Releases with the Companies and others providing for the Companies to be liquidated in this Court. This Court approved the Settlement Agreement in an Order dated March 18, 2008. The Bankruptcy Court entered an order approving the Settlement Agreement dated May 15, 2008.

The Settlement Agreement is scheduled to close on May 28, 2008 and it is anticipated that the Dismissal Notice for the First Assured Bankruptcy would be filed on or about May 28, 2008. Upon receipt of the Dismissal Notice, the Bankruptcy Court will issue an order dismissing the First Assured Bankruptcy which date shall be the Dismissal Date. Under the Settlement Agreement, upon the Dismissal Date, the Liquidator is vested with all right, title interest to all of the property,

contracts, and rights of action and all of the books and records of the Companies and this Court has sole and exclusive jurisdiction to liquidate the Companies.

Upon receipt of the Bankruptcy Court's order dismissing the First Assured Bankruptcy, the Liquidator will notify this Court and include an updated proposed Order that identifies the specific date for the defined term "Dismissal Date."

This Motion is made pursuant to Rules 7(b), 15(a) and 20(a) of the Hawaii Rules of Civil Procedure and is supported by the attached Memorandum in Support of Motion, declaration, exhibits, records and files herein.

Dated: Honolulu, Hawaii, May 21, 2008.

KOBAYASHI, SUGITA & GODA

A handwritten signature in black ink, appearing to read "Clifford K. Higa", written over a horizontal line.

CLIFFORD K. HIGA  
WENDELL H. FUJI  
LANSON K. KUPAU

Attorneys for Plaintiff J.P. SCHMIDT, in his capacity  
as Liquidator of PrimeGuard Insurance Company

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

J.P. SCHMIDT, in his capacity as Insurance Commissioner of the State of Hawaii,	)	S.P. No. 05-1-0443 VSM
	)	(Special Proceeding)
	)	
Petitioner,	)	
	)	MEMORANDUM IN SUPPORT OF MOTION
vs.	)	FOR LEAVE
	)	
PRIMEGUARD INSURANCE COMPANY,	)	
INC., A RISK RETENTION GROUP.,	)	
	)	
Respondent.	)	

**MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE**

This memorandum is submitted in support of the Petitioner J.P. Schmidt's, in his capacity as Liquidator ("Liquidator") of PrimeGuard Insurance Company, Motion for Leave to Add First Assured Warranty Corporation, 1SourceAutoWarranty.Com, Inc. and Warrantee Wise, Inc. as Respondents and Placing Them Under a Supplemental Order of Liquidation ("Motion for Leave").

The addition of First Assured Warranty Corporation ("First Assured"), 1SourceAutoWarranty.com, Inc. ("1Source") and Warrantee Wise, Inc. ("Warrantee Wise") (collectively First Assured, 1Source and Warrantee Wise are referred to as the "Companies") and their liquidation under the sole and exclusive jurisdiction of this Court under the Hawaii Insurers Supervision Rehabilitation and Liquidation Act, 431:15-301 *et seq.* ("Liquidation Act") has been agreed upon by the Liquidator and the Companies in the December 19, 2007 Settlement Agreement and Mutual Releases ("Settlement Agreement"), approved by this Court and approved by the United States Bankruptcy Court for the District of Colorado, Case No. 06-13669-MER, with jurisdiction over First Assured's voluntary petition under Chapter 11 of the Bankruptcy Code (the "Bankruptcy Court").

**I. THE SETTLEMENT AGREEMENT EXPRESSLY REQUIRES THAT THE COMPANIES BE LIQUIDATED IN THE PRIMEGUARD LIQUIDATION PROCEEDINGS UNDER THE LIQUIDATION ACT.**

Under the Settlement Agreement (Kupau Declaration, Exhibit A), the parties expressly agreed that the First Assured bankruptcy be dismissed and that the Companies be liquidated in the PrimeGuard Liquidation Proceeding under the Liquidation Act with such liquidation effective as of the Dismissal Date. Sections 5.1, 5.2 and 5.5 of the Settlement Agreement (Kupau Declaration, Exhibit A) provide as follows:

5.1 Upon receipt of the Dismissal Notice, the Bankruptcy Court shall issue an order dismissing the First Assured Bankruptcy (the "Dismissal Date"). As part of the dismissal of the First Assured Bankruptcy, the Appeals and Adversary Proceedings will also be dismissed.

5.2 Except as provided herein, upon the Dismissal Date all properties of the estate in the First Assured Bankruptcy (the "First Assured Estate"), including any and all assets of any type in which First Assured has, asserts, or may assert an ownership interest (to the extent not released herein), including but not limited to all assets identified in any and all schedules filed by First Assured as the Debtor in the First Assured Bankruptcy, shall be transferred to the Liquidator at which time the Liquidator shall take sole possession and ownership of the assets of First Assured and administer them under the general supervision, and sole and exclusive jurisdiction, of the Liquidation Court. The Liquidator will be vested with the title to all of the property, contracts, and rights of action and all of the books and records of First Assured, wherever located, as of the Dismissal Date, in accordance with Haw. Rev. Stat. § 431:15-307 and the Hawaii Insurers Supervision Rehabilitation and Liquidation Act, 431:15-301 *et seq.* ("Liquidation Act"). Consistent with this provision, the Parties agree that (i) the Bankruptcy Court will have continuing jurisdiction over this Agreement and the First Assured Estate until the Dismissal Date; and (ii) there will be no interruption or gap in ownership and/or jurisdiction and that, immediately upon the Dismissal Date, the Liquidation Court shall have sole and exclusive jurisdiction over First Assured and the First Assured Estate which shall be liquidated by the Liquidator under the Liquidation Act under such terms and conditions as specified by the Liquidation Court.

. . .

5.5 1Source and Warrantee Wise will be liquidated in the Liquidation Court along with First Assured. Upon the Dismissal Date any and all assets of any type in which 1Source and Warrantee Wise have, assert, or may assert an ownership interest (to the extent not released herein) shall be transferred to the Liquidator at which time the Liquidator shall take sole possession and ownership of the assets of 1Source and Warrantee Wise and administer them under the general supervision, and sole and exclusive jurisdiction, of the Liquidation Court. The Liquidator will be vested with the title to all of the property, contracts, and rights of action and all of the books and records of 1Source and Warrantee Wise, wherever located, as of the Dismissal Date, in accordance with Haw. Rev. Stat. § 431:15-307 and the Liquidation Act. Consistent with this provision, the Parties agree that there will be no interruption or gap in ownership and/or jurisdiction and that, immediately upon the Dismissal Date, the Liquidation Court shall have sole and exclusive jurisdiction over 1Source and Warrantee Wise, which shall be liquidated by the Liquidator under the Liquidation Act under such terms and conditions as specified by the Liquidation Court.

**II. THIS COURT AND THE BANKRUPTCY COURT HAVE ALREADY APPROVED THE LIQUIDATION OF THE COMPANIES IN THE PRIMEGUARD LIQUIDATION PROCEEDINGS UNDER THE LIQUIDATION ACT.**

This Court and the Bankruptcy Court have already approved the Settlement Agreement which provides for the relief sought in the Motion for Leave.

Specifically, on March 18, 2008, this Court entered its Order Granting in Part Liquidator's Petition for Final Order and Judgment Approving Liquidator's Settlement with Shareholders' Family and Affiliates and Petition for Good Faith Determination of Settlement. (Kupau Declaration, Exhibit B.) In that Order, this Court ruled, among other things, that:

2. The Settlement Agreement and Mutual Releases ("Agreement"), attached as Exhibit "A" to the Petition, is approved.

3. The Liquidator is authorized to implement the Agreement and to undertake all actions contemplated by the Agreement, including but not limited to, the liquidation of First

Assured Warranty Corporation, 1SourceAutoWarranty.com, Inc.,  
and Warrantee Wise, Inc. in the PrimeGuard Liquidation  
proceedings.

No person opposed the Liquidator's motion seeking such Order and the Order was never  
appealed.

Moreover, on May 15, 2008, the Bankruptcy Court entered its Order Granting Motion for  
Order Approving (I) Compromise of Controversy with the Insurance Commissioner for the State of  
Hawaii; and (II) Conditional Dismissal of the Bankruptcy Case. (Kupau Declaration, Exhibit C.)  
No person opposed the motion seeking such Order and no appeal of such order has been filed.

### **III. THE LIQUIDATION OF THE COMPANIES SHOULD BE EFFECTIVE AS OF THE DISMISSAL DATE.**

Sections 5.2 and 5.5 of the Settlement Agreement (Kupau Declaration, Exhibit A) provide  
that the liquidation of the Companies shall be effective immediately upon the "Dismissal Date" so  
that "there will be no interruption or gap in ownership and/or jurisdiction." The Dismissal Date is  
defined as the date on which the Bankruptcy Court issues its order dismissing the First Assured  
Bankruptcy, which order shall not be issued until after the parties file the "Dismissal Notice" with  
the Bankruptcy Court which shall provide that all of the conditions and events for the Effective Date  
addressed in Section 2 of the Settlement Agreement have occurred. It is anticipated that the  
Dismissal Notice will be filed on or about May 28, 2008 and that the Dismissal Date will occur as  
soon thereafter as possible. In order to ensure that there is no gap in ownership and jurisdiction, the  
Proposed Order has been drafted so that it is effective as of the "Dismissal Date."


Upon receipt of the Bankruptcy Court's order dismissing the First Assured Bankruptcy, the  
Liquidator will notify this Court and include an updated proposed Order that identifies the specific  
date for the defined term "Dismissal Date."

#### IV. CONCLUSION.

Based on the foregoing reasons as set forth above, the Liquidator respectfully requests that this Honorable Court enter a Supplemental Order of Liquidation adding the Companies as Respondents and placing them into liquidation. The provisions sought by the Liquidator are authorized by the Liquidation Act and are set forth in the Proposed Order.

Dated: Honolulu, Hawaii, May 21, 2008.

KOBAYASHI, SUGITA & GODA

  
CLIFFORD K. HIGA  
WENDELL H. FUJI  
LANSON K. KUPAU  
Attorneys for Plaintiff J.P. SCHMIDT,  
in his capacity as Liquidator of PrimeGuard  
Insurance Company, Inc.



IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

J.P. SCHMIDT, in his capacity as Insurance	)	S.P. No. 05-1-0443 VSM
Commissioner of the State of Hawaii,	)	(Special Proceeding)
	)	
Petitioner,	)	
	)	DECLARATION OF LANSON K. KUPAU
vs.	)	
	)	
PRIMEGUARD INSURANCE COMPANY,	)	
INC., A RISK RETENTION GROUP.,	)	
	)	
Respondent.	)	
_____	)	

DECLARATION OF LANSON K. KUPAU

I, LANSON K. KUPAU, pursuant to Circuit Court Rule 7(g), declares as follows:

1. I am a partner with the law firm of Kobayashi, Sugita & Goda and one of the attorneys for J.P. Schmidt, Insurance Commissioner of the State of Hawaii. I am licensed to practice law in all courts of the State of Hawaii and am competent to testify to the matters stated herein, and make this declaration based upon facts of which I have personal knowledge.

2. Attached hereto as Exhibit "A" is a true and correct copy of the Settlement Agreement and Mutual Releases dated December 19, 2007.

3. Attached hereto as Exhibit "B" is a true and correct copy of this Court's March 18, 2008 Order Granting in Part Liquidator's Petition for Final Order and Judgment Approving Liquidator's Settlement with Shareholders' Family and Affiliates and Petition for Good Faith Determination of Settlement. To the best of my knowledge and belief, no person appeared to oppose the motion seeking this Order and no person appealed the Order.

4. Attached hereto as Exhibit "C" is a true and correct copy of the May 15, 2008 Order Granting Motion for Order Approving (I) Compromise of Controversy with the Insurance

Commissioner for the State of Hawaii; and (II) Conditional Dismissal of the Bankruptcy Case entered by the United States Bankruptcy Court for the District of Colorado in Case No. 06-13669 MER. To the best of my knowledge and belief no person appeared to oppose the motion seeking such order and no person appealed such order.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawaii, May 21, 2008.

  
LANSON K. KUPAU

## EXHIBIT A

## SETTLEMENT AGREEMENT AND MUTUAL RELEASES

This Settlement Agreement and Mutual Releases ("Agreement") is dated December 19, 2007, by and among the following parties (collectively, the "Parties"): J.P. Schmidt, in his capacities as Hawaii Insurance Commissioner and as Liquidator of PrimeGuard Insurance Company (collectively, the "Liquidator"); Marcy Morrison, Commissioner of Insurance of the State of Colorado, in her capacity as Ancillary Receiver of PrimeGuard Insurance Company ("Ancillary Receiver"); Warrantee Wise, Inc. ("Warrantee Wise"); First Assured Warranty Corporation ("First Assured"), 1SourceAutoWarranty.com, Inc. ("1Source"); and Ralph Holden, Nancy Perna, F. Mitchell Howell, Ronny Howell, Lisa Holden, Amy Sandifer and Joshua Howell (collectively, the "Holden Family").

### 1. Recitals and Definitions.

1.1 PrimeGuard Insurance Company ("PrimeGuard") is a Hawaii domestic insurance company licensed as a risk retention group.

1.2 Warrantee Wise is a Colorado corporation and is a 99% owner of PrimeGuard. Warrantee Wise was engaged in the business of selling vehicle service contracts ("VSCs") that were insured by PrimeGuard.

1.3 First Assured is a Colorado corporation with its principal place of business in Colorado and is an affiliate of PrimeGuard. First Assured was engaged in the business of selling VSCs that were insured by PrimeGuard.

1.4 1Source is a Colorado corporation with its principal place of business in Colorado and is a wholly-owned subsidiary of First Assured. 1Source was engaged in the business of selling VSCs that were insured by PrimeGuard.

1.5 Various members of the Holden Family have been involved as shareholders, officers, directors, lenders, consultants and in the financing, control and/or operation of First Assured, PrimeGuard, Warrantee Wise and/or 1Source.

1.6 On November 10, 2005, the Hawaii Insurance Commissioner filed an ex parte petition for seizure order in the Circuit Court of the First Circuit for the State of Hawaii ("Liquidation Court") and on November 14, 2005, the Liquidation Court entered a seizure order, which was amended on November 21, 2005 (the "Seizure").

1.7 On or about November 15, 2005, the Commissioner of Insurance of the State of Colorado (the "Ancillary Receiver") commenced an ancillary proceeding to the PrimeGuard Liquidation in the District Court, City and County of Denver, Colorado, captioned *Marcy Morrison v. PrimeGuard Insurance Company, Inc.*, Case No. 05-CV9376 (the "Ancillary Proceeding").

1.8 On December 19, 2005, the Liquidation Court placed PrimeGuard under an Order of Liquidation ("PrimeGuard Liquidation").

{00501806 / 1}

## EXHIBIT A

1.9 On June 16, 2006, First Assured filed a voluntary petition under Chapter 11 of the Bankruptcy Code ("First Assured Bankruptcy") in the United States Bankruptcy Court for the District of Colorado, Case No. 06-13669-MER ("Bankruptcy Court"). First Assured is a debtor-in-possession in the First Assured Bankruptcy.

1.10 In the First Assured Bankruptcy, First Assured has filed certain adversary proceedings (collectively, the "Adversary Proceedings"), bearing the following adversary case numbers: 06-1735-MER, 06-1736-MER, 06-1737-MER and 07-1351-MER. The defined phrase "First Assured Bankruptcy" includes the "Adversary Proceedings."

1.11 In the First Assured Bankruptcy, First Assured made demand against Nancy Perna and Ralph Holden for the return of transfers totaling approximately \$850,000 which First Assured alleged were avoidable as possible preferential, fraudulent or improper distributions. Nancy Perna and Ralph Holden both vigorously dispute such claims and have asserted numerous defenses to such claims, including subsequent new value and solvency.

1.12 The Liquidator's proceedings against First Assured are the subject of the automatic stay pursuant to 11 U.S.C. § 362(a).

1.13 On or about June 22, 2006, the Liquidator filed its Motion for Relief from Stay and Amended Motion to Dismiss, and subsequently filed its Motion to Excuse Turnover of Property by a Custodian and Motion to Prohibit Use of Cash Collateral, which motions were ruled on in Orders from the Bankruptcy Court dated March 6, 2007 and April 27, 2007, which Orders are the subject of appeals pending in the United States District Court for the District of Colorado ("Appeals").

1.14 In the First Assured Bankruptcy, First Assured is in possession of certain cash totaling \$394,120.87 as of July 31, 2007 ("Cash Collateral"), in which the Liquidator claims an interest.

1.15 The Liquidator is currently in possession of approximately \$3.5 million, in which First Assured claims an interest.

1.16 On or about July 3, 2007, the Parties sought and obtained stays of the First Assured Bankruptcy, the Appeals and Adversary Proceedings in order to permit the Parties to pursue settlement negotiations. On July 25, 2007, the Parties agreed that the negotiations were being held in Hawaii at the request of PrimeGuard and as an accommodation by First Assured and the Holden Family, and that the attendance (in person or by telephonic conference call) at such negotiations or the mere presence of persons attending such negotiations in the State of Hawaii shall in no event have any legal consequences including, without limitation, a deemed waiver of or consent to jurisdiction, a contact sufficient to establish jurisdiction, an admission of liability, or an admission of any fact, whether express or implied, by any party attending the negotiations, either in person or through a representative. In addition, the Liquidator and his

agents and representatives, agreed not to serve, attempt to serve or cause to be served any process for any claim or action on the following individuals and entities while in Hawaii for attendance at the settlement negotiations: (i) First Assured and its officers and director (ii) 1SourceAutoWarranty.com, (ii) Douglas Jessop, as counsel for First Assured, (iii) Josh Howell, personally or as shareholder of First Assured (iv) Josh Howell, as representative or agent of the shareholders of First Assured and (iv) Josh Howell as a representative or agent of Ralph Holden. The Parties have since engaged in settlement negotiations, including an in-person meeting in Hawaii on July 26, 2007, which negotiations have culminated in this Agreement.

1.17 In order to minimize the cost, expense and difficulty of proceeding with litigation regarding the PrimeGuard Liquidation, the Seizure, the First Assured Bankruptcy, the Adversary Proceedings and the Appeals, the Parties are willing to settle all issues on the terms and conditions set forth below:

1.18 It is understood that the Parties' agreement to the terms hereof shall in no manner be deemed to be a fact or an admission, express or implied, of liability or the merits of a position by any Party to any other person or entity, by any party hereto with respect to any matter, nor shall the Parties' agreement to the terms hereof be deemed to constitute consent to jurisdiction in the State of Hawaii, State of Colorado, or any other forum or state.

#### Agreements

NOW THEREFORE, for and in consideration of the mutual agreements, promises, covenants, and releases herein set forth, and for other good and valuable consideration, the sufficiency of which is hereby conclusively acknowledged, it is hereby agreed by and among the Parties as follows:

2. The Effective Date. The "Effective Date" shall be defined as the first business day upon which all of the following conditions have been satisfied:

- (a) all Parties have signed this Agreement;
- (b) the Holden Payment shall have been made;
- (c) the Liquidation Court has entered its order(s)
  - (i) approving this Agreement and granting the petition for determination of Good Faith Settlement as described in Section 3.4 of this Agreement (the "Hawaii Approval Order(s)");
  - (ii) Thirty days (as computed in accordance with Hawaii Rules of Civil Procedure) have passed from entry of the Hawaii Approval Order(s); and

(iii) The Hawaii Approval Order(s) shall not have been reversed or modified on appeal and, if any such appeal is pending, the Hawaii Approval Order(s) shall not have been stayed.

(d) the Bankruptcy Court has entered its order:

(i) approving this Agreement and authorizing the dismissal of the First Assured Bankruptcy after the Court receives notice of the Effective Date (the "Bankruptcy Approval Order");

(ii) Ten days (as computed in accordance with Fed. R. Bankr. P. 9006) shall have passed from the entry of the Bankruptcy Approval Order; and

(iii) The Bankruptcy Approval Order shall not have been reversed or modified on appeal and, if any such appeal is pending, the Bankruptcy Approval Order shall not have been stayed.

3. Actions Before the Effective Date.

3.1 On or before the date that is the 30<sup>th</sup> day from the date that is the last date of execution of this Agreement, the Holden Family will cause \$150,000 (the "Holden Payment"), as referenced in § 2(b) of this Agreement, to be deposited into First Assured's counsel's COLTAF account (non-interest bearing).

3.2 Upon execution of this Agreement, First Assured shall immediately cease prosecution of its Plan of Reorganization and Disclosure Statement dated October 16, 2006 ("Plan").

3.3 Upon execution of this Agreement and if possible by December 28, 2007 and no later than January 11, 2008, First Assured shall file and prosecute in good faith a motion (the "Bankruptcy Motion") in the Bankruptcy Court disclosing the terms of this Agreement, and seeking authorization to dismiss the First Assured Bankruptcy conditioned upon the Bankruptcy Court's receipt of notice of the Effective Date (the "Dismissal Notice"). Pending the Bankruptcy Court's ruling on the Bankruptcy Motion, First Assured shall take no action inconsistent with the terms or purposes of this Agreement. First Assured and the Liquidator shall cooperate with the preparation and distribution of the notice of the Bankruptcy Motion, including the shared mailing of such notice along with notice of the Hawaii Motion(s) (as defined below).

3.4 Upon execution of this Agreement and if possible by December 28, 2007 and no later than January 11, 2008, the Liquidator shall file and prosecute in good faith a motion(s) in the Liquidation Court (the Hawaii Motion(s)) disclosing the terms of this Agreement, seeking the Liquidation Court's approval of the Agreement and seeking an order for the determination of

Good Faith Settlement, which shall include PrimeGuards' release and dismissal of the Holden Family, First Assured, 1Source and Warrantee Wise, as set forth herein, as co-obligors in accordance with Haw. Rev. Stat. § 663-15.5. Pending the Liquidation Court's ruling on the Hawaii Motion(s), the Liquidator shall take no action inconsistent with the terms or purposes of this Agreement. The Parties agree to cooperate in good faith in the preparation and filing of the Hawaii Motion(s) and securing of such order(s), including the shared mailing of notices by First Assured and the Liquidator.

3.5 Contemporaneously with execution of this Agreement, First Assured, with the Liquidator's input and approval, shall enter into an agreement with the Ancillary Receiver (the "Ancillary Deposit Agreement"). A copy of the Ancillary Deposit Agreement is attached hereto as Exhibit 3.5. Pursuant to the terms of the Ancillary Deposit Agreement, First Assured and the Ancillary Receiver, with the Liquidator's input and approval, will create an "Ancillary Deposit" which shall be funded by the Holden Payment. The Ancillary Deposit will total One Hundred Fifty Thousand dollars (\$150,000). Of that amount, One Hundred Forty Thousand dollars (\$140,000) shall be used to pay "Allowed Unsecured Trade Creditors" (as defined below) claims on a pro rata basis as further specified in Section 6 below. The remaining Ten Thousand Dollars (\$10,000) shall be used to pay any expenses associated with the Ancillary Deposit Agreement or the Ancillary Proceedings. Any remaining amounts of the Ancillary Deposit after paying expenses associated with the Ancillary Deposit Agreement or the Ancillary Proceedings shall be transferred by the Ancillary Receiver to the Liquidator. If the amount of surplus is not sufficient to pay the costs incurred by the Ancillary Receiver associated with establishing, maintaining and closing the Deposit Account, the Liquidator agrees to reimburse the Ancillary Receiver for such costs actually incurred, subject to approval by the Liquidation Court. The Ancillary Deposit will be maintained by the Ancillary Receiver subject to the jurisdiction of the court with jurisdiction over the Ancillary Proceedings and will be administered and liquidated in that proceeding in accordance with this Agreement and the Ancillary Deposit Agreement.

4. Deliverables on the Effective Date. On the Effective Date, or on the date indicated below, and in connection with effecting and consummating the Effective Date, the following events shall occur:

4.1 First Assured's counsel shall transfer the Holden Payment to the Ancillary Receiver. Upon the Dismissal Date (as defined below in Section 5.1), the Holden Payment will be the sole and exclusive property of the Ancillary Receiver maintained under the jurisdiction of the Ancillary Proceeding in accordance with Colo. Rev. Stat. § 10-3-552 and the Colorado Insurers' Rehabilitation and Liquidation Act, Colo. Rev. Stat § 10-3-501 *et seq.* and such funds will be distributed by the Ancillary Receiver under the terms of the Ancillary Deposit Agreement.

4.2 Subject to Section 7 below, and on the date indicated, First Assured shall issue payments from the Cash Collateral for the limited purpose of paying the following bankruptcy



administrative expenses, which are hereby deemed reasonable and appropriate, and the allowed claims asserted by the IRS and other taxing authorities (the "Tax Claims"):

- (i) On the Effective Date, Attorneys fees and costs which have accrued as of November 30, 2007, in the approximate amount of \$280,000;
- (ii) On or after the date of execution of this Agreement, Notice agent and U.S. Trustee fees and costs, currently estimated in the amount of \$85,000;
- ~~(iii) On the Effective Date, First Assured salaries which have accrued as of November 30, 2007, in the amount of \$130,000; and~~
- (iv) On or after the date of execution of this Agreement, Tax Claims currently estimated in the amount of \$10,000.

4.3 Attorneys for the Parties shall execute and file the Dismissal Notice with the Bankruptcy Court which shall provide that all of the conditions and events set forth in Section 2 of this Agreement have occurred.

#### 5. Bankruptcy Court and Liquidation Court Proceedings.

5.1 Upon receipt of the Dismissal Notice, the Bankruptcy Court shall issue an order dismissing the First Assured Bankruptcy (the "Dismissal Date"). As part of the dismissal of the First Assured Bankruptcy, the Appeals and Adversary Proceedings will also be dismissed.

5.2 Except as provided herein, upon the Dismissal Date all properties of the estate in the First Assured Bankruptcy (the "First Assured Estate"), including any and all assets of any type in which First Assured has, asserts, or may assert an ownership interest (to the extent not released herein), including but not limited to all assets identified in any and all schedules filed by First Assured as the Debtor in the First Assured Bankruptcy, shall be transferred to the Liquidator at which time the Liquidator shall take sole possession and ownership of the assets of First Assured and administer them under the general supervision, and sole and exclusive jurisdiction, of the Liquidation Court. The Liquidator will be vested with the title to all of the property, contracts, and rights of action and all of the books and records of First Assured, wherever located, as of the Dismissal Date, in accordance with Haw. Rev. Stat. § 431:15-307 and the Hawaii Insurers Supervision Rehabilitation and Liquidation Act, 431:15-301 *et seq.* ("Liquidation Act"). Consistent with this provision, the Parties agree that (i) the Bankruptcy Court will have continuing jurisdiction over this Agreement and the First Assured Estate until the Dismissal Date; and (ii) there will be no interruption or gap in ownership and/or jurisdiction and that, immediately upon the Dismissal Date, the Liquidation Court shall have sole and exclusive jurisdiction over First Assured and the First Assured Estate which shall be liquidated by the

Liquidator under the Liquidation Act under such terms and conditions as specified by the Liquidation Court.

5.3 Subject to the Liquidation Court's approval of this Agreement: (i) all First Assured creditors with claims arising under vehicle service contracts and who have filed a proof of claim in the First Assured Bankruptcy ("VSC Claim"), regardless of whether such claims have been filed in the PrimeGuard Liquidation, shall be treated as if such claims were timely filed on an appropriate proof of claim form in the PrimeGuard Liquidation; and (ii) the Liquidator shall treat all such VSC Claims the same as similarly situated claims timely filed with the Liquidator or in the PrimeGuard Liquidation on proper forms.

5.4 Subject to Section 9.6 of this Agreement, First Assured and the Holden Family will cooperate in good faith with the Liquidator in seeking such rulings as are consistent with this Agreement and the administration and liquidation of First Assured in the Liquidation Court.

5.5 1Source and Warrantee Wise will be liquidated in the Liquidation Court along with First Assured. Upon the Dismissal Date any and all assets of any type in which 1Source and Warrantee Wise have, assert, or may assert an ownership interest (to the extent not released herein) shall be transferred to the Liquidator at which time the Liquidator shall take sole possession and ownership of the assets of 1Source and Warrantee Wise and administer them under the general supervision, and sole and exclusive jurisdiction, of the Liquidation Court. The Liquidator will be vested with the title to all of the property, contracts, and rights of action and all of the books and records of 1Source and Warrantee Wise, wherever located, as of the Dismissal Date, in accordance with Haw. Rev. Stat. § 431:15-307 and the Liquidation Act. Consistent with this provision, the Parties agree that there will be no interruption or gap in ownership and/or jurisdiction and that, immediately upon the Dismissal Date, the Liquidation Court shall have sole and exclusive jurisdiction over 1Source and Warrantee Wise, which shall be liquidated by the Liquidator under the Liquidation Act under such terms and conditions as specified by the Liquidation Court.

5.6 Subject to Section 9.6 of this Agreement, First Assured, 1Source and Warrantee Wise and the Holden Family will cooperate in good faith with the Liquidator in effecting the transfer of any and all right, title and interest to properties of 1Source, Warrantee Wise and/or the First Assured Estate, except as to those properties addressed herein, including assets of any type or nature, including but not limited to causes of action, in which 1Source, Warrantee Wise and/or First Assured asserts a claim of ownership, including but not limited to all assets identified by First Assured in any and all property schedules filed with the Bankruptcy Court and the proceeds thereof.

5.7 Subject to Section 9.6 of this Agreement, First Assured, 1Source, Warrantee Wise and the Holden Family agree to cooperate in good faith regarding the liquidation of 1Source and Warrantee Wise in the Liquidation Court. First Assured, 1Source, Warrantee Wise and the

Holden Family agree not to commence bankruptcy proceedings regarding 1Source and/or Warrantee Wise.

5.8 Subject to Section 9.6 of this Agreement, the Liquidator will cooperate in good faith with First Assured in seeking such rulings as are consistent with this Agreement and effecting the payment of the bankruptcy administrative expenses listed in Section 4.2 and Section 7.

## 6. Ancillary Proceedings and Trade Creditor Claims

6.1 Pursuant to the Ancillary Deposit Agreement, the Ancillary Receiver shall distribute One Hundred and Forty Thousand Dollars (\$140,000) of the Ancillary Deposit on a pro-rata basis to the Allowed Unsecured Trade Creditors (as defined below) no later than 360 days after the Effective Date.

6.2 "Allowed Unsecured Trade Creditors" shall be defined to mean those creditors who filed a proof of claim in the First Assured Bankruptcy Case asserting an unsecured claim and whose claim is not a VSC Claim or a Tax Claim and whose claim is listed on Exhibit 1 to the Ancillary Deposit Agreement. The Allowed Unsecured Trade Creditors shall receive the pro-rata amount listed in the column labeled "Pro-rata Distribution" on Exhibit 1 to the Ancillary Deposit Agreement.

6.3 Certain creditors have filed a proof of claim in the First Assured Bankruptcy that is properly classified as a VSC Claim. Such claims shall be addressed pursuant to Section 5.3 above and shall not receive any distribution from the Ancillary Deposit. Similarly, certain trade creditors have filed a proof of claim in the First Assured Bankruptcy that is properly classified as a secured claim (each, a "Secured Claim"). All Secured Claims shall be addressed in the liquidation of First Assured in the Liquidation Court as specified in Section 5 hereof.

## 7. Cash Collateral and Administrative Expenses.

7.1 Because the Cash Collateral is insufficient to pay all of the reasonable and appropriate administrative expenses listed in Section 4.2, the existing Cash Collateral shall be allocated by First Assured to pay such claims as follows:

- (a) first to pay the Tax Claims;
- (b) second to pay the notice agent and U.S. Trustee fees and costs;
- (c) third to pay fees and salaries of Patrick Giefer; and
- (d) fourth to pay, on a pro rata basis, attorneys fees and costs of Jessop & Co, P.C. and fees and salaries of Robert Dungan.

{00501806 / 1}

7.2 To the extent that any of the claim amounts set forth in Section 4.2 are reduced or otherwise satisfied, First Assured shall have the discretion to distribute the remainder from the Cash Collateral to the other administrative expense claims identified herein. To the extent First Assured has a surplus after the administrative expense claims identified in § 4.2 are paid, such surplus shall be paid to the Liquidator on the Dismissal Date.

7.3 If the Cash Collateral has been exhausted by payment of the administrative expense claims identified in § 4.2, the shortfall (i.e. the remaining unpaid reasonable and appropriate administrative expense claims identified herein), including, but not limited to, First Assured's attorney's fees and costs and salaries and costs accrued after November 30, 2007, if any, shall be paid up to a maximum amount of \$100,000, from the following two sources: first, until six months after the Effective Date, the Liquidator will attempt to liquidate assets currently in the possession of the First Assured Estate and use the proceeds from such liquidation efforts to pay any shortfall; second, in the event those proceeds are insufficient to pay such shortfall, the Liquidator shall pay such remaining balance within thirty (30) days of the one-year anniversary of the Effective Date.

## 8. Mutual Releases.

### 8.1 Liquidator and Ancillary Receiver Release of Holden Family.

Effective upon the Effective Date, the Liquidator and Ancillary Receiver, for themselves and their respective successors and assigns, each individually hereby releases, acquits, and forever discharges the Holden Family, individually and collectively, their personal representatives, heirs, assigns, and attorneys (solely in their capacity as attorneys for the Holden Family and except as set forth below) of and from any and all injuries, actions, assessments, claims, controversies, counterclaims, cross-claims, third-party claims, fourth-party claims, (or any other claims under Rule 14 of the Hawaii Rules of Civil Procedure, Colorado Rules of Civil Procedure, or the Federal Rules of Civil Procedure, or rule similar thereto of any other jurisdiction, and including without limitation claims for indemnity, contribution, subrogation, and/or reimbursement), causes of action, suits, liabilities, demands, damages, losses, decrees, awards, liens, disputes, costs, lost profits, loss of services, expenses, fees (including attorneys' and other professionals' fees), judgments and compensation whatsoever, in law or in equity, known or unknown, suspected or unsuspected, asserted or unasserted, patent or latent, which have been or could have been brought, arising out of, incidental to, or in any way connected with PrimeGuard, First Assured, Warrantee Wise, 1Source, or the commencement and/or administration of the PrimeGuard Liquidation, the Ancillary Proceeding, the First Assured Bankruptcy, and the Seizure.

The release contemplated in this Section 8.1 does not apply to Robert Dungan; however, the releases set forth in Sections 8.3, 8.4 and 8.5 apply to Robert Dungan.

### 8.2 Holden Family Release of Liquidator and Ancillary Receiver.

Effective upon the Effective Date, the Holden Family, individually and collectively, their personal representatives, heirs and assigns, hereby release, acquit, and forever discharge the Liquidator, Ancillary Receiver, their respective successors, assigns, and attorneys (solely in their capacity as attorneys for the Liquidator or Ancillary Receiver) of and from any and all injuries, actions, assessments, claims, controversies, counterclaims, cross-claims, third-party claims, fourth-party claims, (or any other claims under Rule 14 of the Hawaii Rules of Civil Procedure, Colorado Rules of Civil Procedure, or the Federal Rules of Civil Procedure, or rule similar thereto of any other jurisdiction, and including without limitation claims for indemnity, contribution, subrogation, and/or reimbursement), causes of action, suits, liabilities, demands, damages, losses, decrees, awards, liens, disputes, costs, lost profits, loss of services, expenses, fees (including attorneys' and other professionals' fees), judgments and compensation whatsoever, in law or in equity, known or unknown, suspected or unsuspected, asserted or unasserted, patent or latent, which have been or could have been brought, arising out of, incidental to, or in any way connected with PrimeGuard, First Assured, Warrantee Wise, 1Source, or the commencement and/or administration of the PrimeGuard Liquidation, the Ancillary Proceeding, the First Assured Bankruptcy, and the Seizure.

### 8.3 First Assured, 1Source and Warrantee Wise Release of Holden Family and Officers, Directors, and Professionals.

Effective upon the Effective Date, First Assured, 1Source and Warrantee Wise, collectively and individually, for itself, its officers, directors, partners, agents, affiliates, employees, successors and assigns, each hereby releases, acquits, and forever discharges the Holden Family, and also the officers, directors and accountants, auditors and attorneys (collectively, the "Professionals") of First Assured, 1Source and Warrantee Wise, respectively, individually and collectively, their successors, personal representatives, heirs, assigns, and attorneys of and from any and all injuries, actions, assessments, claims, controversies, counterclaims, cross-claims, third-party claims, fourth-party claims, (or any other claims under Rule 14 of the Hawaii Rules of Civil Procedure, Colorado Rules of Civil Procedure, or the Federal Rules of Civil Procedure, or rule similar thereto of any other jurisdiction, and including without limitation claims for indemnity, contribution, subrogation, and/or reimbursement), causes of action, suits, liabilities, demands, damages, losses, decrees, awards, liens, disputes, costs, lost profits, loss of services, expenses, fees (including attorneys' and other professionals' fees), judgments and compensation whatsoever, in law or in equity, known or unknown, suspected or unsuspected, asserted or unasserted, patent or latent, which have been or could have been brought, arising out of, incidental to, or in any way connected with PrimeGuard, First Assured, Warrantee Wise, 1Source, or the commencement and/or administration of the PrimeGuard Liquidation, the Ancillary Proceeding, the First Assured Bankruptcy, and the Seizure.

First Assured, 1Source and Warrantee Wise each represents and warrants that it has considered potential claims and causes of action against its own officers, directors and Professionals and concluded that this settlement will minimize the cost, expense and difficulty of proceeding with litigation against those individuals and or entities.

First Assured represents and warrants that no material transactions that are not of record occurred during the First Assured Bankruptcy. A material breach of this representation and warranty invalidates the release set forth in this Section 8.3 with respect to the officers, directors and Professionals of First Assured for any conduct, actions or inactions related to the First Assured Bankruptcy and occurring after May 15, 2006.

8.4 Holden Family Release of First Assured, 1Source and Warrantee Wise.

Effective upon the Effective Date, the Holden Family, individually and collectively, their personal representatives, heirs and assigns, hereby release, acquit, and forever discharge First Assured, 1Source and Warrantee Wise, collectively and individually, its officers, directors, partners, agents, affiliates, employees, successors, assigns, and attorneys (solely in their capacity as attorneys for First Assured, 1Source and/or Warrantee Wise) of and from any and all injuries, actions, assessments, claims, controversies, counterclaims, cross-claims, third-party claims, fourth-party claims, (or any other claims under Rule 14 of the Hawaii Rules of Civil Procedure, Colorado Rules of Civil Procedure, or the Federal Rules of Civil Procedure, or rule similar thereto of any other jurisdiction, and including without limitation claims for indemnity, contribution, subrogation, and/or reimbursement), causes of action, suits, liabilities, demands, damages, losses, decrees, awards, liens, disputes, costs, lost profits, loss of services, expenses, fees (including attorneys' and other professionals' fees), judgments and compensation whatsoever, in law or in equity, known or unknown, suspected or unsuspected, asserted or unasserted, patent or latent, which have been or could have been brought, arising out of, incidental to, or in any way connected with PrimeGuard, First Assured, Warrantee Wise, 1Source, or the commencement and/or administration of the PrimeGuard Liquidation, the Ancillary Proceeding, the First Assured Bankruptcy, and the Seizure.

8.5 Liquidator and Ancillary Receiver Release of First Assured, 1Source and Warrantee Wise Related to Commencing the Bankruptcy.

Effective upon the Effective Date, the Liquidator and the Ancillary Receiver, for themselves and their respective successors and assigns, each individually hereby releases, acquits, and forever discharges First Assured, 1Source and Warrantee Wise, collectively and individually, its officers, directors, partners, affiliates, employees, agents, successors, personal representatives, assigns, and attorneys (solely in their capacity as attorneys for First Assured, 1Source and/or Warrantee Wise) of and from any and all injuries, actions, assessments, claims, controversies, counterclaims, cross-claims, third-party claims, fourth-party claims, (or any other claims under Rule 14 of the Hawaii Rules of Civil Procedure, Colorado Rules of Civil Procedure, or the Federal Rules of Civil Procedure, or rule similar thereto of any other

jurisdiction, and including without limitation claims for indemnity, contribution, subrogation, and/or reimbursement), causes of action, suits, liabilities, demands, damages, losses, decrees, awards, liens, disputes, costs, lost profits, loss of services, expenses, fees (including attorneys' and other professionals' fees), judgments and compensation whatsoever, in law or in equity, known or unknown, suspected or unsuspected, asserted or unasserted, patent or latent, based on acts, conduct or omissions occurring on or after May 15, 2006 which have been or could have been brought, arising out of, incidental to, or in any way connected with the commencement and/or administration of the First Assured Bankruptcy. Notwithstanding the foregoing, and except for the administrative claims set forth in Section 4.2, the Liquidator reserves all rights to object to and/or oppose any claims asserted by First Assured, its officers and directors, their successors, personal representatives, heirs and assigns against First Assured and/or PrimeGuard and the Liquidator.

8.6 First Assured, 1Source, and Warrantee Wise Release of Liquidator and Ancillary Receiver Related to the Seizure and Liquidation.

Effective upon the Effective Date, First Assured, 1Source, and Warrantee Wise, collectively and individually, each for itself, its officers, directors, partners, agents, affiliates, employees, successors and assigns, hereby releases, acquits, and forever discharges the Liquidator and the Ancillary Receiver, their respective successors, assigns and attorneys (solely in their capacity as attorneys for the Liquidator) of and from any and all injuries, actions, assessments, claims, controversies, counterclaims, cross-claims, third-party claims, fourth-party claims, (or any other claims under Rule 14 of the Hawaii Rules of Civil Procedure, Colorado Rules of Civil Procedure, or the Federal Rules of Civil Procedure, or rule similar thereto of any other jurisdiction, and including without limitation claims for indemnity, contribution, subrogation, and/or reimbursement), causes of action, suits, liabilities, demands, damages, losses, decrees, awards, liens, disputes, costs, lost profits, loss of services, expenses, fees (including attorneys' and other professionals' fees), judgments and compensation whatsoever, in law or in equity, known or unknown, suspected or unsuspected, asserted or unasserted, patent or latent, which have been or could have been brought, arising out of, incidental to, or in any way connected with the commencement and/or administration of the Seizure, the PrimeGuard Liquidation and the Ancillary Proceeding.

The release in this Section 8.6 includes (but is not limited to) the release of any and all claims to funds seized as part of the Seizure, which are also referenced in Section 1.15 of this Agreement and are the subject of Adversary Proceeding 07-1351-MER.

8.7 Persons Not Being Released by First Assured and the Liquidator and Ancillary Receiver.

The Liquidator does not release and expressly reserves all rights, claims, actions and remedies that could be brought, asserted or maintained in the name of PrimeGuard (except those expressly released herein) including but not limited to pursuing claims and causes of action in the name of Prime Guard against PrimeGuard's officers, directors and Professionals. Further the Liquidator reserves all rights to assert counterclaims and affirmative defenses against First Assured, 1 Source and Warrantee Wise officers, directors and Professional, if those persons assert claims against the Liquidator.

So there is no misunderstanding, members of the Holden Family are being released individually and in all of their respective capacities, including but not limited to their capacity as shareholders, officers and directors of any entity referenced herein.

8.8 Liquidator and Ancillary Receiver Acknowledgment of Holden Family Release by First Assured, 1Source and Warrantee Wise.

The Liquidator and Ancillary Receiver each acknowledges and recognizes that First Assured, 1Source and Warrantee Wise have executed releases for the Holden Family and the officers, directors and Professionals of First Assured, 1Source and Warrantee Wise as set forth herein. After the Effective Date, each will rely on the representation and warranty in Section 8.3 and recognize and continue to honor the releases for the Holden Family and the officers, directors and Professionals of First Assured, 1Source and Warrantee Wise and will not seek to avoid those releases by direct or derivative claims.

8.9 Uniform Contribution Among Tortfeasors Act: Limitations on Persons Discharged Hereunder.

This Agreement shall be subject to the provisions of the Hawaii Uniform Contribution Among Tortfeasors Act, Hawaii Revised Statutes § 663-11 *et seq.* This Agreement and the Releases shall not release or discharge any person other than the released parties, but shall reduce the aggregate of PrimeGuard's Claims and/or claims of First Assured, 1Source and Warrantee Wise against all persons deemed to be the released parties' joint tortfeasors (hereinafter "Joint Tortfeasors"). An individual claim against a Joint Tortfeasor shall be reduced by the extent of the pro rata share of liability of the Released Parties of PrimeGuard's and/or First Assured's and/or 1Source's and/or Warrantee Wise's damages recoverable against all the Joint Tortfeasors or by the amount of the consideration paid by the released parties, whichever is greater. The calculation of the dollar amount of the consideration to be allocated to the release of any individual claim shall be based on the percentage value of that claim in relation to the aggregate value of the claims of PrimeGuard, First Assured, 1Source and/or Warrantee Wise against the Released Parties and the Joint Tortfeasor.



## 9. Miscellaneous.

9.1 Suspension of Interim Deadlines and Discovery. Upon execution of this Agreement, and until the earlier of (i) June 1, 2008, or such later date agreed upon by the Parties reasonably under the circumstances or (ii) all Parties agree in writing that the Effective Date conditions of this Agreement will not be satisfied or waived (the "Termination Date"), the Parties shall cease further depositions and discovery under the First Assured Bankruptcy and the Adversary Proceedings. Further, upon the execution and until such Termination Date the Parties agree to suspend and waive any filing deadlines, existing between or among the parties to this Agreement, for objections, motions, ballots, reports, statements, exhibits, lists, or the like in the First Assured Bankruptcy or any of the Adversary Proceedings. The Parties shall request such approval of this suspension and waiver as appropriate (but not as to non-parties to this Agreement).

9.2 Return of Holden Payment. In the event the Termination Date occurs as described in Section 9.1 above, First Assured's counsel shall deliver the Holden Payment to the Holden Family.

9.3 Holden Payment and Hold Harmless Agreement. The parties agree to defend and hold harmless Jessop & Company, P.C., in its capacity as First Assured's counsel in connection with the deposit of the Holden Payment so long as such payment is held consistent with the terms of this Agreement. In the event of a dispute concerning the Holden Payment before the Holden Payment is transferred under the Ancillary Deposit Agreement on the Dismissal Date, First Assured's counsel may interplead the Holden Payment to the Bankruptcy Court.

9.4 Settlement of Disputed Claim. The Parties acknowledge that this Agreement is a compromise resolution of disputed claims for the purpose of mitigating the costs, uncertainties, and burdens of further litigation and that this Agreement does not constitute an acknowledgment or admission of liability in any way on the part of the Parties hereto, and that the Parties expressly deny any liability or wrongdoing in connection with First Assured, PrimeGuard, the Seizure, PrimeGuard Liquidation and First Assured Bankruptcy.

9.5 Party Warranties as to Reliance, Counsel, Authority, Approvals, Transfers. Each Party warrants and represents that: (a) each Party executed this Agreement of its own free will and that no promise, representation, or inducement has been made or offered, except as set forth herein, and that this Agreement is not executed in reliance upon any statements or representation of any other Party or its representatives concerning any matter, including the nature and extent of the injury, damages or legal liability therefore; (b) it has had the opportunity to review with counsel of its choice this Agreement to obtain independent legal advice with respect to the advisability of executing this Agreement and to investigate the facts relating to this Agreement; (c) it has full power, authority and legal right, on its own behalf and on behalf of its successors and assigns heretofore and hereafter, to execute, deliver and perform all actions required under this Agreement; (d) any and all board, shareholder, contractual, or other requirements which may

(005Q)806 / 1)

be applicable to authorize the execution of this Agreement have been met; and there have been no transfers or assignments of any of the claims covered by the releases herein.

9.6 Choice of Law and Forum. This Agreement shall be construed in accordance with the laws of the State of Hawaii, the State of Colorado, and the Bankruptcy Code, where applicable. The forum to resolve any controversy, claim or dispute arising out of or relating to this Agreement, its enforcement or the breach thereof, shall be in the State of Hawaii or the State of Colorado as appropriate, except that the Bankruptcy Court may serve as such a forum prior to the dismissal of the First Assured Bankruptcy. The Holden Family objects to and does not consent to the jurisdiction of the State of Hawaii over the Holden Family, including but not limited to the jurisdiction of the Liquidation Court.

9.7 Cooperation in Implementing Settlement. The Parties and their respective counsel shall cooperate in the preparation and execution of any petitions, agreements, orders, or other documents necessary to accomplish the terms, purposes and intent of this Agreement and consummating the transactions herein.

9.8 Entire Understanding, Waiver and Modification. This Agreement contains the entire understanding among the Parties with respect to the matters described herein and supersedes all preexisting or simultaneous agreements, oral or written. No breach of any provision hereof can be waived unless in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provisions hereof. This Agreement may not be changed, modified or amended except by a written agreement executed by the Parties.

9.9 Counterparts and Originals. This Agreement may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same document.

9.10 Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto, their successors-in-interest, heirs, assigns, officers, employees, attorneys, agents, devisees, legatees, personal representatives, trustees, directors, members and shareholders.

9.11 No Third Party Beneficiaries. This Agreement creates no third party beneficiaries and shall not create any rights or benefits that may be enforced by any persons not party to this Agreement.

9.12 No Interpretation Against Drafter. Because each Party has had the opportunity to draft, review and edit the language in this Agreement, no presumption for or against any Party arising out of the drafting of all or any part of the Agreement will be applied in any action or

other proceeding relating to, arising out of, or invoking this Agreement and each Party waives the benefit of any statute or rule of law providing otherwise.

9.13 Inclusion of Recitals and Definitions. The provisions in the Recitals and Definitions section of this Agreement are valid, binding and enforceable.

9.14 Costs and Fees. Each Party shall bear their own costs and fees.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the dates indicated.

J.P. Schmidt, in his capacities as Hawaii Insurance Commissioner and as Liquidator of PrimeGuard Insurance Company (collectively, "Liquidator")

By: [Signature] for J.P. Schmidt  
Title: Chief Deputy Insurance Commissioner  
Date: 12/20/07

By: [Signature] for J.P. Schmidt  
Title: Spec. Dep. Liquidator (Liquidator)  
Date: 12/20/07

Marcy Morrison, Insurance Commissioner for the State of Colorado, in her capacity as Ancillary Receiver of PrimeGuard Insurance Company ("Ancillary Receiver")

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

First Assured Warranty Corporation, debtor in possession ("First Assured")

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Warrantee Wise, Inc. ("Warrantee Wise")

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

1SourceAutoWarranty.Com, Inc. ("1Source")

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the dates indicated.

J.P. Schmidt, in his capacities as Hawaii Insurance Commissioner and as Liquidator of PrimeGuard Insurance Company (collectively, "Liquidator")

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Marcy Morrison, Insurance Commissioner for the State of Colorado, in her capacity as Ancillary Receiver of PrimeGuard Insurance Company ("Ancillary Receiver")

By: Marcy Morrison  
Title: Commissioner  
Date: 12/19/07

First Assured Warranty Corporation, debtor in possession ("First Assured")

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Warrantee Wise, Inc. ("Warrantee Wise")

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

1SourceAuto Warranty, Com, Inc. ("1Source")

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the dates indicated.

J.P. Schmidt, in his capacities as Hawaii Insurance Commissioner and as Liquidator of PrimeGuard Insurance Company (collectively, "Liquidator")

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Marcy Morrison, Insurance Commissioner for the State of Colorado, in her capacity as Ancillary Receiver of PrimeGuard Insurance Company ("Ancillary Receiver")

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

First Assured Warranty Corporation, debtor in possession ("First Assured")

By: [Signature]  
Title: PRESIDENT  
Date: December 24, 2007

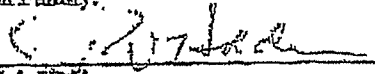
Warrantee Wise, Inc. ("Warrantee Wise")

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

1SourceAutoWarranty.Com, Inc. ("1Source")

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

The Holden Family:

  
Ralph Holden

Date: 12-20-07

Nancy Perna

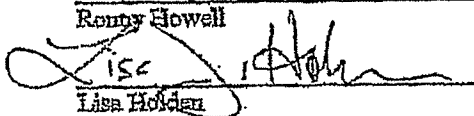
Date: \_\_\_\_\_

Mitchell Howell

Date: \_\_\_\_\_

Ronny Howell

Date: \_\_\_\_\_

  
Lisa Holden

Date: 12-20-2007

Amy Sandifer

Date: \_\_\_\_\_

Joshua Howell

Date: \_\_\_\_\_

(Dns01806/2)

Settlement Agreement  
December 19, 2007  
Page 18 of 18

The Holden Family:

  
Ralph Holden

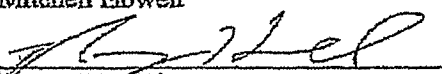
Date: 12-20-07

Nancy Perna

Date: \_\_\_\_\_

Mitchell Howell

Date: \_\_\_\_\_

  
Ronny Howell

Date: 12-24-07

Lisa Holden

Date: \_\_\_\_\_

Amy Sandifer

Date: \_\_\_\_\_

Joshua Howell

Date: \_\_\_\_\_



The Holden Family:

Ralph Holden

Date: \_\_\_\_\_

*Nancy Perma*  
Nancy Perma

Date: 12-20-2007

Mitchell Howell

Date: \_\_\_\_\_

Ronny Howell

Date: \_\_\_\_\_

Lisa Holden

Date: \_\_\_\_\_

Amy Sandifer

Date: \_\_\_\_\_

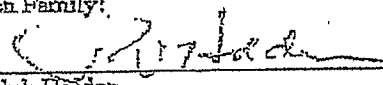
Joshua Howell

Date: \_\_\_\_\_

(00501806/Z)

Settlement Agreement  
December 19, 2007  
Page 18 of 18

The Holden Family:

  
Ralph Holden

Date: 12-20-07

Nancy Perna

Date: \_\_\_\_\_

Mitchell Howell

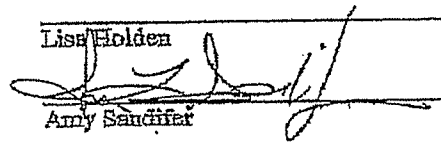
Date: \_\_\_\_\_

Ronny Howell

Date: \_\_\_\_\_

Lisa Holden

Date: \_\_\_\_\_

  
Amy Sandifar

Date: 12-21-07

Joshua Howell

Date: \_\_\_\_\_

(00501305 / 2)

Settlement Agreement  
December 19, 2007  
Page 13 of 18

## The Holden Family:

Ralph Holden

Date: \_\_\_\_\_

Nancy Perna

Date: \_\_\_\_\_

Mitchell Howell

Date: \_\_\_\_\_

Ronny Howell

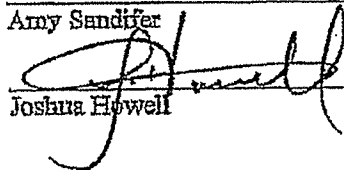
Date: \_\_\_\_\_

Lisa Holden

Date: \_\_\_\_\_

Amy Sandifer

Date: \_\_\_\_\_

  
Joshua HowellDate: 12/24/07

## ANCILLARY DEPOSIT AGREEMENT

This Ancillary Deposit Agreement (this "Deposit Agreement") is entered into this 19th day of December, 2007, between and among First Assured Warranty Corporation ("First Assured") and Marcy Morrison, Commissioner of Insurance of the State of Colorado, in her capacity as Ancillary Receiver of PrimeGuard Insurance Company ("Ancillary Receiver").

### 1. RECITALS AND DEFINITIONS

- 1.1. PrimeGuard Insurance Company ("PrimeGuard") is a Hawaii domestic insurance company licensed as a risk retention group.
- 1.2. First Assured is a Colorado corporation with its principal place of business in Colorado and is an affiliate of PrimeGuard. First Assured was engaged in the business of selling Vehicle Service Contracts ("VSCs"), and its VSCs were insured by PrimeGuard.
- 1.3. On November 10, 2005, J.P. Schmidt, in his capacities as Hawaii Insurance Commissioner and as Liquidator of PrimeGuard Insurance Company (the "Liquidator") filed an ex parte petition for seizure order in the Circuit Court of the First Circuit for the State of Hawaii ("Liquidation Court") and on November 14, 2005, the Liquidation Court entered a seizure order, which was amended on November 21, 2005 (the "Seizure").
- 1.4. On or about November 15, 2005, the Commissioner of Insurance of the State of Colorado commenced an ancillary proceeding to the PrimeGuard Liquidation in the District Court, City and County of Denver, Colorado (the "Ancillary Court"), captioned as *Marcy Morrison v. PrimeGuard Insurance Company, Inc.*, Case No. 05-CV-9376 (the "Ancillary Proceeding").
- 1.5. On December 19, 2005, the Liquidation Court placed PrimeGuard under an Order of Liquidation with a finding of insolvency (the "PrimeGuard Liquidation").
- 1.6. On June 16, 2006, First Assured filed a voluntary petition under Chapter 11 of the Bankruptcy Code ("First Assured Bankruptcy") in the United States Bankruptcy Court for the District of Colorado, Case No. 06-13669-MER ("Bankruptcy Court"). First Assured is a debtor-in-possession in the First Assured Bankruptcy.
- 1.7. Dated December 7, 2007, First Assured, the Liquidator and certain other parties, including Warrantee Wise, Inc. ("Warrantee Wise"), 1SourceAutoWarranty.Com, Inc. ("1Source") and Ralph Holden, Nancy Perna, Mitchell Howell, Ronny Howell, Lisa Holden, Amy Sandifer, and

Joshua Howell (collectively, the "Holden Family"), entered into a Settlement Agreement (the "Settlement Agreement"). The terms of this Deposit Agreement are specifically contemplated under the terms of the Settlement Agreement and the Settlement Agreement is hereby incorporated as if fully set forth herein. To the extent of any inconsistency between the terms of the Settlement Agreement and the terms of this Deposit Agreement, the terms of the Settlement Agreement shall control.

- 1.8. Under the Settlement Agreement, the parties settled and resolved all pending litigation between them, including without limitation the Seizure, the PrimeGuard Liquidation and the Ancillary Proceeding.
- 1.9. Section 3.5 of the Settlement Agreement provides that First Assured shall deposit the sum of \$150,000 in an account designated by the Ancillary Receiver (the "Ancillary Deposit"). Section 3.5 of the Settlement Agreement further provides that the Ancillary Receiver shall distribute One Hundred Forty Thousand dollars (\$140,000) of the Ancillary Deposit to "Trade Creditors" (as such term is defined in the Settlement Agreement) and the remaining Ten Thousand Dollars (\$10,000) shall be used to pay any expenses associated with the Deposit Agreement or the Ancillary Proceedings. Section 3.5 also provides that the Ancillary Receiver may rely upon the information contained in Exhibit 1 to this Ancillary Deposit Agreement, and that the Ancillary Receiver will be held harmless by the parties if the information listed on Exhibit 1 is incorrect.
- 1.10. The purpose of this Deposit Agreement is to set forth the terms and conditions for (i) the distribution of the Ancillary Deposit and (ii) the conclusion of the Ancillary Proceeding.

## 2. AGREEMENTS

NOW THEREFORE, for and in consideration of the mutual agreements and promises herein set forth and for other good and valuable consideration, the sufficiency of which is hereby conclusively acknowledged, it is hereby agreed by and among the Parties as follows:

### 2.1. Establishment of Deposit Account

The Ancillary Receiver will cause an account designated and established by the Ancillary Receiver in a bank located in Colorado (the "Deposit Account"). The Deposit Account will operate so that deposits may be made by First Assured or any other person authorized by the Ancillary Receiver but withdrawals may be made only by the Ancillary Receiver. The account shall be an asset under the control and direction of the Ancillary Receiver maintained under the jurisdiction of the Ancillary Court in accordance with Colo. Rev. Stat. § 10-3-552.

2.2. Distribution to Trade Creditors

- 2.2.1. No later than 360 days after the Effective Date of the Settlement Agreement (including First Assured's Deposit of \$150,000 in the Ancillary Deposit as set forth in Section 1.9 above), the Ancillary Receiver shall distribute One Hundred Forty Thousand Dollars (\$140,000) from the Deposit Account to the Trade Creditors (as such term is defined in the Settlement Agreement) in the amounts and at the addresses listed on Exhibit 1 attached hereto. Such payments shall be sent by check using certified mail, return receipt requested.
- 2.2.2. Prior to making the distributions set forth in Section 2.2.1, the Ancillary Receiver will seek approval from the Ancillary Court and will have received a final, non-appealable order from the Ancillary Court approving such distributions.

2.3. Surplus and Interest Earned on Funds in Deposit Account

- 2.3.1. The Ancillary Receiver shall distribute Ten Thousand dollars of the Ancillary Deposit along with any interest earned on the Ancillary Deposit to pay any and all costs incurred by the Ancillary Receiver, or associated with establishing, maintaining and closing the Deposit Account. The remaining surplus after such costs have been paid, if any, shall be paid to the Liquidator, after seeking and obtaining approval from the Ancillary Court.
- 2.3.2. If the amount of surplus and interest is not sufficient to pay the costs incurred by the Ancillary Receiver associated with establishing, maintaining and closing the Deposit Account, the Liquidator agrees to reimburse the Ancillary Receiver for such costs actually incurred, subject to approval by the Liquidation Court.

2.4. Ancillary Court Notice and Approval

- 2.4.1. **Notice.** The Ancillary Receiver shall file a copy of this Deposit Agreement in the Ancillary Court and shall notify the Ancillary Court after receiving the funds identified herein.
- 2.4.2. **Approval.** Before making any payments of the funds or otherwise disbursing such funds, the Ancillary Receiver shall seek and receive approval from the Ancillary Court.

2.5. Scope of Ancillary Proceeding and Dismissal

2.5.1. Notwithstanding any provision set forth in Colo. Rev. Stat. § 10-3-501, *et seq.*, the scope of the Ancillary Proceeding and the authority of the Ancillary Receiver shall be limited to the matters addressed in this Deposit Agreement and the Ancillary Receiver shall otherwise be subject to the terms of the Settlement Agreement.

2.5.2. Upon completion of the distribution of the Ancillary Deposit and closing the Deposit Account, the Ancillary Receiver shall file a motion to dismiss the Ancillary Proceeding.

2.6. Choice of Law and Forum

This Deposit Agreement shall be construed in accordance with the laws of the State of Colorado. With the exception of approval from the Liquidation Court for any expenditure by the Liquidator, and except that the Bankruptcy Court may serve as such a forum prior to the dismissal of the First Assured Bankruptcy, the forum to resolve any controversy, claim or dispute arising out of or relating to this Deposit Agreement, its enforcement or the breach thereof, shall be in the Ancillary Court.

2.7. Entire Understanding, Waiver and Modification

This Deposit Agreement and the referenced Settlement Agreement contain the entire understanding between the parties hereto with respect to the matters described herein and supersedes all preexisting or simultaneous agreements, oral or written, recognizing that this Deposit Agreement is being entered into to facilitate the Settlement Agreement and should be construed in conjunction therewith. No breach of any provision hereof can be waived unless in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision hereof. This Deposit Agreement may not be changed, modified or amended except by a written agreement executed by the parties.

2.8. Counterparts and Originals

This Deposit Agreement may be executed in counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same document.

2.9. Binding Effect

This Deposit Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto, their successors-in-interest, heirs, officers, employees, attorneys, agents, devisees, legatees, personal representatives, trustees, directors, members and shareholders.

2.10. No Third Party Beneficiaries

This Deposit Agreement creates no third party beneficiaries and shall not create any rights or benefits that may be enforced by any persons not party to this Deposit Agreement.

2.11. No Interpretation against Drafter

Because each party had the opportunity to draft, review and edit the language in this Deposit Agreement, no presumption for or against any party arising out of the drafting of all or any part of the Deposit Agreement will be applied in any action or other proceeding relating to, arising out of, or invoking this Deposit Agreement and each party waives the benefit of any statute or rule of law providing otherwise.

2.12. Inclusion of Recitals and Definitions

The provisions in the Recitals and Definitions section of this Deposit Agreement are valid, binding and enforceable.

IN WITNESS WHEREOF, the undersigned have executed this Deposit Agreement on the dates indicated.

Marcy Morrison, Insurance Commissioner for the State of Colorado, in her capacity as Ancillary Receiver of PrimeGuard Insurance Company ("Ancillary Receiver")

By: Marcy Morrison  
Title: Commissioner  
Date: 12/19/07

First Assured Warranty Corporation ("First Assured")

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



2.10. No Third Party Beneficiaries

This Deposit Agreement creates no third party beneficiaries and shall not create any rights or benefits that may be enforced by any persons not party to this Deposit Agreement.

2.11. No Interpretation against Drafter

Because each party had the opportunity to draft, review and edit the language in this Deposit Agreement, no presumption for or against any party arising out of the drafting of all or any part of the Deposit Agreement will be applied in any action or other proceeding relating to, arising out of, or invoking this Deposit Agreement and each party waives the benefit of any statute or rule of law providing otherwise.

2.12. Inclusion of Recitals and Definitions

The provisions in the Recitals and Definitions section of this Deposit Agreement are valid, binding and enforceable.

IN WITNESS WHEREOF, the undersigned have executed this Deposit Agreement on the dates indicated.

Marcy Morrison, Insurance Commissioner for the State of Colorado, in her capacity as Ancillary Receiver of PrimeGuard Insurance Company ("Ancillary Receiver")

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

First Assured Warranty Corporation ("First Assured")

By: [Signature]  
Title: President  
Date: January 11, 2008

{00490973 / 1}

Ancillary Deposit Agreement  
December 19, 2007  
Page 5 of 5

**Exhibit 1**  
**FIRST ASSURED WARRANTY CORPORATION**  
**Allowed Unsecured Trade Creditors**

Claim Number	Name	Address	City	State	Zip Code	Claim Amount	Pro-rata Distribution
127	Anton Collins Mitchell, LLP	303 E. 17th Ave, Ste. 600	Denver	CO	80203	\$10,165.00	\$1,480.10
171	Chell & Lyshak P.L.C.	26154 Woodward Ave	Royal Oak	MI	48068-1257	\$632.50	\$92.10
250	Barnes, David	1205 Hadley St.	St. Louis	MO	63106	\$50,265.00	\$7,318.94
276	National Dealers Warranty, Inc./ Kohnen, Carl F.	650 N. Jefferson St.	Florissant	MO	63031	\$83,348.00	\$12,136.05
327	American Express Travel Related Svcs Co Inc. Corp. Card o/o Becket & Lee LLP	P.O. Box 3001	Malvern	PA	19355-0701	\$344,634.36	\$50,181.17
337	Ropers, Majeski, Kohn & Bentley	80 North First St.	San Jose	CA	95113	\$8,390.95	\$1,221.78
376	Key Merchant Services, LLC/ Troutman, Andrew Craig, Esq.	7300 Chapman Highway	Knoxville	TN	37920	\$423,201.88	\$61,621.15
465	Meridian Rack & Pinion dba Meridian Auto Parts	10211 Pacific Mesa Blvd. #404	San Diego	CA	92121	\$5,602.00	\$815.69
470	Miles & Stockbridge, P.C. / Kenney, Brian F. Esq.	1751 Pinnacle Dr. Ste. 500	McLean	VA	22102	\$31,611.28	\$4,602.82
478	Continental Volkswagon Inc.	6000 S. Broadway	Littleton	CO	80121	\$206.25	\$30.03
522	Garage Calabrese Inc.	1602 62nd St.	Brooklyn	NY	11204	\$3,435.04	\$500.17
<b>TOTAL</b>						<b>\$961,492.26</b>	<b>\$140,000.00</b>

## EXHIBIT B

KOBAYASHI, SUGITA & GODA  
WENDELL H. FUJI 4222-0  
CLIFFORD K. HIGA 2950-0  
LANSON K. KUPAU 5687-0  
First Hawaiian Center  
999 Bishop Street, Suite 2600  
Honolulu, Hawaii 96813-3889  
Telephone: 539-8700

FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED  
2008 MAR 18 PM 3:19

H. CHING  
CLERK

Attorneys for Petitioner J.P. Schmidt  
Insurance Commissioner of the State of Hawaii

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

J.P. SCHMIDT, in his capacity as Insurance Commissioner of the State of Hawaii,	) S.P. No. 05-1-0443 VSM
	) (Special Proceedings)
	)
Petitioner,	) ORDER GRANTING IN PART
	) LIQUIDATOR'S PETITION FOR FINAL
vs.	) ORDER AND JUDGMENT APPROVING
	) LIQUIDATOR'S SETTLEMENT WITH
PRIMEGUARD INSURANCE COMPANY, INC., A RISK RETENTION GROUP,	) SHAREHOLDERS' FAMILY AND
	) AFFILIATES AND PETITION FOR GOOD
	) FAITH DETERMINATION OF
Respondent.	) SETTLEMENT
	)
	) <u>HEARING</u>
	)
	) Date: March 5, 2008
	) Time: 8:30 a.m.
	) Judge: Hon. Victoria S. Marks
	)
	) NO TRIAL DATE SET
	)
	)

ORDER GRANTING IN PART LIQUIDATOR'S PETITION FOR FINAL ORDER AND JUDGMENT APPROVING LIQUIDATOR'S SETTLEMENT WITH SHAREHOLDERS' FAMILY AND AFFILIATES AND PETITION FOR GOOD FAITH DETERMINATION OF SETTLEMENT

Petitioner J.P. SCHMIDT, in his capacity as Insurance Commissioner of the State of Hawaii ("Petitioner") PETITION FOR FINAL ORDER AND JUDGMENT APPROVING LIQUIDATOR'S SETTLEMENT WITH SHAREHOLDERS' FAMILY AND AFFILIATES

EXHIBIT B

AND PETITION FOR GOOD FAITH DETERMINATION OF SETTLEMENT, filed herein on January 14, 2008, came on for hearing before the Honorable Victoria S. Marks on March 5, 2008 at 8:30 a.m. Lanson K. Kupau, Esq. and Joel A. Glover Esq. appeared on behalf of the Petitioner, John Y. Yamano, Esq. appeared on behalf of First Assured Warranty Corporation and 1SourceAutoWarranty.com, Inc., and Ray Galvan appeared pro se. No opposition was filed.

On March 6, 2008, a Stipulation for Limited Extension Related to Good Faith Determination was filed that established March 19, 2008 as the deadline for BDO Seidman, LLP ("BDO"), Anton Collins Mitchell ("ACM"), and Aon Insurance Managers (USA) ("Aon") to file a response and/or objection, if any, to the Liquidator's Petition for Good Determination of Settlement (the "Stipulation").

The Court, having considered the Liquidator's Petition for Final Order and Judgment Approving Liquidator's Settlement with Shareholders' Family and Affiliates and Petition for Good Faith Determination of Settlement, the Memorandum in Support of Petition, the Declaration of Special Deputy Liquidator Paul S.K. Yuen, Exhibit "A" – the Settlement Agreement, the Notice of Hearing and Certificate of Service, the Stipulation, and being otherwise fully advised in the premises, hereby FINDS AND ORDERS as follows:

1. The Liquidator's Petition for Final Order and Judgment Approving Liquidator's Settlement with Shareholders' Family and Affiliates and Petition for Good Faith Determination of Settlement (the "Petition") is granted in its entirety except as otherwise referenced herein.
2. The Settlement Agreement and Mutual Releases ("Agreement"), attached as Exhibit "A" to the Petition, is approved.
3. The Liquidator is authorized to implement the Agreement and to undertake all actions contemplated by the Agreement, including but not limited to, the liquidation of First Assured Warranty Corporation, 1SourceAutoWarranty.com, Inc., and Warrantee Wise, Inc. in the PrimeGuard Liquidation proceedings.
4. As applied to all persons and/or entities other than BDO, ACM and Aon, the settlement detailed in the Agreement was entered into in good faith in accordance with Haw. Rev. Stat. § 633-15.5 and all statutory conditions required thereunder have been satisfied.

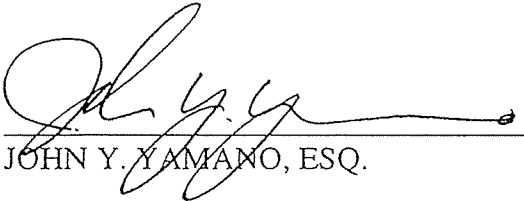
5. The Court also finds that, pursuant to Haw. R. Civ. Pro., Rule 54(b), there is more than one claim for relief still pending in this Special Proceeding and thus, there is no just reason for delay in entering a final judgment as to the court's granting of the instant Motion.

6. Therefore, it further ordered and expressly directed, pursuant to Haw. R. Civ. Pro., Rule 54(b) and 58, that this Order be entered as a final judgment.

DATED: Honolulu, Hawaii, MAR 17 2008, 2008.

  
JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM AND CONTENT:

  
JOHN Y. YAMANO, ESQ.

---

*J.P. SCHMIDT, in his capacity as Insurance Commissioner of the State of Hawaii v. Primeguard Insurance Company, Inc., A Risk Retention Group, S.P. No. 05-1-0443 VSM; ORDER GRANTING IN PART LIQUIDATOR'S PETITION FOR FINAL ORDER AND JUDGMENT APPROVING LIQUIDATOR'S SETTLEMENT WITH SHAREHOLDERS' FAMILY AND AFFILIATES AND PETITION FOR GOOD FAITH DETERMINATION OF SETTLEMENT*

## EXHIBIT C

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLORADO**

In re:

FIRST ASSURED WARRANTY CORPORATION,  
a Colorado corporation,

EIN: 84-1366869

Debtor.

)  
)  
) Case No. 06-13669 MER  
)  
) Chapter 11  
)  
)  
)  
)  
)

---

**ORDER GRANTING  
MOTION FOR ORDER APPROVING: (I) COMPROMISE OF CONTROVERSY WITH  
THE INSURANCE COMMISSIONER FOR THE STATE OF HAWAII; AND (II)  
CONDITIONAL DISMISSAL OF THE BANKRUPTCY CASE**

---

THIS MATTER comes before the Court on the Motion for Order Approving: (I) Compromise of Controversy with the Insurance Commissioner for the State of Hawaii; and (II) Conditional Dismissal of the Bankruptcy Case (the "Motion") filed by First Assured Warranty Corporation (the "Debtor") on January 11, 2008. The Court has reviewed the Motion, is advised in the premises, no objections have been filed and sustained, and there being good cause therefore, it is hereby:

ORDERED that:

- (1) Debtor is authorized to enter into that certain Settlement Agreement and Mutual Releases (the "Agreement") dated December 19, 2007, a copy of which is attached to the Motion;
- (2) Debtor is authorized to take all action contemplated by the Agreement; and
- (3) Upon the Court's receipt of a notice stating that all of the conditions required to establish the Effective Date (as defined in the Agreement) have been satisfied, the above-captioned bankruptcy case shall be dismissed.

DATED this 15<sup>th</sup> day of May, 2008

BY THE COURT:


  
\_\_\_\_\_  
Honorable Michael E. Romero  
United States Bankruptcy Judge

EXHIBIT C



IN THE CIRCUIT COURT OF THE FIRST CIRCUIT


STATE OF HAWAII

J.P. SCHMIDT, in his capacity as Insurance Commissioner of the State of Hawaii,	) S.P. No. 05-1-0443 VSM
	) (Special Proceeding)
	)
Petitioner,	) NOTICE OF HEARING AND CERTIFICATE
	) OF SERVICE
vs.	)
	)
PRIMEGUARD INSURANCE COMPANY, INC., A RISK RETENTION GROUP.,	)
	)
	)
Respondent.	)
_____	)

TO: **JOHN Y. YAMANO, ESQ.**  
McCorriston Miller Mukai MacKinnon  
Five Waterfront Plaza  
500 Ala Moana Blvd., 4<sup>th</sup> Floor  
Honolulu, Hawaii 96813

NOTICE IS HEREBY GIVEN that Petitioner J.P. Schmidt's, in his capacity as Liquidator of PrimeGuard Insurance Company, Inc., MOTION FOR LEAVE TO ADD FIRST ASSURED WARRANTY CORPORATION, 1SOURCEAUTOWARRANTY.COM, INC. AND WARRANTEE WISE, INC. AS RESPONDENTS AND PLACING THEM UNDER A SUPPLEMENTAL ORDER OF LIQUIDATION shall come on for hearing before the Honorable Victoria S. Marks, Judge of the above-entitled Court, in her courtroom at 777 Punchbowl Street, Honolulu, Hawaii, on July 7, 2008 at 11 a.m./~~p.m.~~, or as soon thereafter as counsel may be heard.

Dated: Honolulu, Hawaii, May 21, 2008.

  
CLIFFORD K. HIGA  
WENDELL H. FUJI  
LANSON K. KUPAU

Attorneys for Plaintiff J.P. SCHMIDT,  
in his capacity as Liquidator of PrimeGuard  
Insurance Company, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this date, a copy of the foregoing document was duly served by means of hand delivery on the following persons at their respective address:

**JOHN Y. YAMANO, ESQ.**

McCorriston Miller Mukai MacKinnon  
Five Waterfront Plaza  
500 Ala Moana Blvd., 4<sup>th</sup> Floor  
Honolulu, Hawaii 96813

I hereby further certify that a Notice of Filed Pleading describing a summary of the Liquidator's Motion, information on how to obtain a copy of the entire Motion, the hearing date, time, place and when an opposition / position will be due, has been served upon all persons identified in Haw. Rev. Stat., § 431:15-311 via U.S. Mail and on PrimeGuard's website: [www.primeguard.hawaii.gov](http://www.primeguard.hawaii.gov).

Dated: Honolulu, Hawaii, May 21, 2008.

KOBAYASHI, SUGITA & GODA



CLIFFORD K. HIGA  
WENDELL H. FUJI  
LANSON K. KUPAU

Attorneys for Plaintiff J.P. SCHMIDT,  
in his capacity as Liquidator of PrimeGuard  
Insurance Company, Inc.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

J.P. SCHMIDT, in his capacity as Insurance  
Commissioner of the State of Hawaii,

Petitioner,

vs.

PRIMEGUARD INSURANCE COMPANY,  
INC., A RISK RETENTION GROUP., FIRST  
ASSURED WARRANTY CORPORATION,  
1SOURCEAUTOWARRANTY.COM, INC.  
AND WARRANTEE WISE, INC.

Respondents.

S.P. No. 05-1-0443 VSM  
(Special Proceeding)

)

)

)

)

)

)

)

)

)

)

)

)

[PROPOSED] SUPPLEMENTAL ORDER OF  
LIQUIDATION

[PROPOSED] SUPPLEMENTAL ORDER OF LIQUIDATION

This matter came for consideration before the Honorable Victoria S. Marks, on this date, on Petitioner J.P. Schmidt's, in his capacity as Insurance Commissioner of the State of Hawaii ("Commissioner"), Motion for Leave to Add First Assured Warranty Corporation, 1SourceAutoWarranty.com, Inc. and Warrantee Wise, Inc. as Respondents and Placing Them Under a Supplemental Order of Liquidation ("Motion for Leave").

Based upon the Commissioner's showing, through the Motion for Leave, including the attached declaration and exhibits,

THE COURT HEREBY SPECIFICALLY FINDS AND ORDERS, JUDGES AND DECREES as follows:

1. An Order of Liquidation was entered by this Court with respect to PrimeGuard Insurance Company on December 19, 2005. That Order of Liquidation remains in full force and effect and this Supplemental Order of Liquidation serves to supplement and work in conjunction with the

existing Order of Liquidation.

2. Under the December 19, 2007 Settlement Agreement and Mutual Releases approved by this Court in an Order dated March 18, 2008 and approved by the United States Bankruptcy Court for the District of Colorado in Case No. 06-13669 (“Bankruptcy Court”) on May 15, 2008, this Court has sole and exclusive jurisdiction over First Assured Warranty Corporation (“First Assured”), 1SourceAuotWarranty.com, Inc. (“1Source”) and Warrantee Wise, Inc. (“Warrantee Wise”) (collectively the “Companies”) and the Companies shall be liquidated by the Liquidator under the Hawaii Insurers Supervision, Rehabilitation and Liquidation Act, Haw. Rev. Stat. § 431:15-101 *et seq.* (the “Act”).

3. Regardless of the date on which this Order is entered, this Supplemental Liquidation Order shall be effectively commencing immediately on the “Dismissal Date” which shall be the same date on which the Bankruptcy Court issues its order dismissing the First Assured Bankruptcy, Case No. 06-13669.

4. First Assured, Warrantee Wise and 1Source shall each be added as respondents in this action and the case caption shall be amended to reflect that modification.

5. The Companies’ business is ordered liquidated. The Commissioner, and the Commissioner’s successors in office, is appointed as Liquidator of the Companies. The Liquidator shall forthwith take possession of the assets of the Companies and administer them under the general supervision of this Court. The Liquidator shall be vested by operation of law with title to all of the property, contracts, and rights of action and all of the books and records of the Companies, wherever located, as of the entry of the Order of Liquidation. The filing or recording of this Liquidation Order with the clerk of the Circuit Court of the First Judicial Circuit and at the Bureau of Conveyances shall impart the same notice as evidence of title.

6. Upon issuance of this Supplemental Order of Liquidation and effective as of the Dismissal Date, the rights and liabilities of the Companies and of their creditors, policyholders, shareholders, members and all other persons interested in its estate are fixed, except as otherwise provided in Haw. Rev. Stat. §§ 431:15-308 and 431:15-327.

7. In accordance with Haw. Rev. Stat. § 431:15-307(e), the Liquidator shall provide accounting to the court on a quarterly basis.

8. The Liquidator has all powers and authority as set forth in the Liquidation Act, including but not limited to, Haw. Rev. Stat. § 431:15-310, which provides that the Liquidator shall have the power to:

- a. Appoint a special deputy to act for the Liquidator under the Act, and to determine the special deputy's reasonable compensation. The special deputy shall have all powers of the Liquidator granted by Haw. Rev. Stat. § 451:15-310. The special deputy shall serve at the pleasure of the Liquidator.
- b. Employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and such other personnel as the Liquidator deems necessary to assist in the Liquidation.
- c. Fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers and consultants, with the approval of the court.
- d. Pay reasonable compensation to persons appointed, and defray from the funds or assets of the Companies all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. In the event that the property of the Companies does not contain sufficient cash or liquid assets to defray the costs incurred, the Commissioner may advance the costs so incurred from the assets of PrimeGuard Insurance Company and, if those are insufficient, then out of any appropriation for the maintenance of the insurance division. Any amounts so advanced for expenses of administration shall be repaid out of the first available moneys of the Companies.
- e. Hold hearings, subpoena witnesses to compel their attendance, administer oaths, examine any person under oath, and compel any party to subscribe to their testimony after it has been correctly reduced to writing, and in connection therewith require the production of any books, papers, records or other documents that the Liquidator deems relevant to the inquiry.

- f. Collect all debts and moneys due and claims belonging to the Companies, wherever located, and for this purpose to: (i) institute timely action in other jurisdictions, to forestall garnishment and attachment proceedings against such debts; (ii) do such other acts as are necessary or expedient to collect, conserve or protect its assets or property, including the power to sell, compound, compromise or assign debts for purposes of collection upon such terms and conditions as the Liquidator deems best; and (iii) pursue any creditor's remedies available to enforce its claims.
- g. Conduct public and private sales of the property of the Companies.
- h. Use assets of the estate of the Companies to transfer policy obligations to one or more solvent companies, if the transfer can be arranged without prejudice to applicable priorities under Haw. Rev. Stat. § 431:15-332.
- i. Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with, any property of the Companies at its market value or upon such terms and conditions as are fair and reasonable. The Liquidator shall also have power to execute, acknowledge, and deliver any and all deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation.
- j. Borrow money on the security of the Companies' assets, or without security, and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation.
- k. Enter into such contracts as are necessary to carry out the order to liquidate, and affirm or disavow any contracts to which the insurer is a party.
- l. Continue to prosecute and institute in the name of the Companies or in the Liquidator's own name any and all suits and other legal proceedings in this state and elsewhere, and abandon the prosecution of claims the Liquidator deems unprofitable to pursue further. If one or more of the Companies is dissolved under Haw. Rev. Stat. § 431:15-309, the Liquidator shall have the power to apply to any court in this state or elsewhere for leave to substitute the Liquidator therefore as plaintiff.
- m. Prosecute any action that may exist on behalf of the creditors, members, policyholders or shareholders of the Companies against any officer of the Companies or any other person, to the extent not released in the Settlement Agreement.
- n. Remove any or all records and property of the Companies to the offices of the Commissioner or to such other place as may be convenient for the purposes of efficient and orderly execution of the Liquidation.
- o. Deposit in one or more banks in this states such sums as are required for meeting current administration expense and dividend distributions.

- p. Invest all sums not currently needed, unless the court orders otherwise.
- q. File any necessary documents for recordation in the Bureau of Conveyances or other appropriate office or elsewhere where property of the Companies is located.
- r. Assert all defenses available to the Companies as against third persons, including statutes of limitations, statutes of frauds, and the defense of usury. A waiver of any defense by the Companies after the petition for liquidation was filed shall not bind the Liquidator.
- s. Exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included with Haw. Rev. Stat. §§ 431:15-315 through 431:15-317.
- t. Intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered.
- u. Enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation or dissolution of the Companies.
- v. Exercise all powers now held or hereafter conferred upon liquidators or receivers by the laws of this state not inconsistent with the Act.
- w. Do such other acts not specifically enumerated in this Supplemental Order of Liquidation and the Act, or otherwise provided for, as may be necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation of the Companies.

9. Pursuant to Haw. Rev. Stat. §431:15-106, any officer, manager, director, trustee, owner, employee, or agent of the Companies, or any other persons with authority over, or in charge of any segment of the Companies' affairs, shall cooperate with the Commissioner, Liquidator or receiver in this proceeding, related proceedings, and any investigation preliminary to this proceeding. The term "person" in this paragraph includes any person who exercises control directly or indirectly over activities of the Companies through any holding company or other affiliate of the insurer and includes, but is not limited to, all officers, managers, directors, trustees, owners, employees or agents of First Assured Warranty Corporation,

1SourceAutoWarranty.com, and Warrantee Wise, Inc. The duty and obligation to cooperate shall include, but shall not be limited to the following:

- a. To reply promptly in writing to any inquiry from the Commissioner, Liquidator or receiver requesting such a reply.
- b. To make available and deliver to the Commissioner, Liquidator, or receiver any books, accounts, documents, or other records, or information or property of or pertaining to the Companies and in its possession, custody and control, including but not limited all funds that were, or should have been, held in separate trust accounts for the benefit of the Companies.
- c. Specifically, the banks set forth below shall cooperate with the Liquidator and receiver in order to facilitate the transfer of any assets being held for the benefit of the Companies, to the extent such transfers have not already occurred:

10. No person shall obstruct or interfere with the Commissioner, Liquidator or receiver in the conduct of this delinquency proceeding or any investigation preliminary or incidental hereto.

11. Pursuant to Haw. Rev. Stat. § 431:15-105, the following injunctions and restraining orders are entered and the Liquidator may seek further injunctions, restraining orders and orders as necessary and proper under the Act. Application of these injunctions includes, but is not limited to, all persons identified in Paragraph 9 of this Liquidation Order.

- a. The Companies are enjoined and restrained from the transaction of further business. The Companies are hereby enjoined from issuing any warranties that identify PrimeGuard as an insurer of such warranties.
- b. No property belonging to the Companies may be transferred without the express written approval of the Liquidator and/or the receiver.
- c. Interference with the Liquidator or receiver or with this proceeding is prohibited.
- d. Waste of the Companies' assets is prohibited.
- e. Dissipation and transfer of bank accounts is prohibited, except as expressly provided for herein or as designated by the Liquidator or receiver.
- f. With the exception of actions brought or expressly approved by the Liquidator, the institution or further prosecution of any actions or proceedings against the Companies is prohibited.



- g. The obtaining of preferences, judgments, attachments, garnishments, or liens against the Companies is prohibited.
- h. The levying of execution against the Companies is prohibited.
- i. The making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the Companies is prohibited.
- j. The withholding from the Liquidator or receiver of books, accounts, documents, or other records relating to the business of the Companies is prohibited.
- k. Any other threatened or contemplated action that might lessen the value of the Companies' assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of any proceeding under this article is prohibited.

Dated: Honolulu, Hawaii, \_\_\_\_\_.

---

JUDGE OF THE ABOVE-ENTITLED COURT